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Supreme Court of the United States

October Term, 1926.

No. 68.

QUON QUON POY, Appellant,

vs.

JOHN P. JOHNSON,
United States Commissioner of Immigration
at the Port of Boston, Mass.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

The petitioner, appellant, a boy fifteen years old, arrived at the port of Boston on the Steamship Prince George, June 25, 1924, bearing an affidavit to which was attached his photograph and also the photograph of his father Quon Mee Sing. This affidavit had been approved by the immigration authorities and citizenship of the father admitted. He came from China to join his father in the United States. He was held in custody with no examination whatever from June 25 until Sept. 10, 1924, when he was questioned by a single inspector. He was further questioned on Sept. 11, 1924, and on that day his father Quon Mee Sing and his brother Quon Gong Set were examined by the same single inspector, acting alone. On Sept. 12, 1924, he was recalled and submitted to further questioning by the same single inspector, acting alone. He was then, on the date last named, first taken before a Board of Special Inquiry, so called, and was informed that the testimony given before the single inspector as aforesaid "will be made a part of the present pro-

ceedings. Do you understand? Answer. Yes." On the same day, Sept. 12, the following questions and answers were recorded, to wit: "Q. You are informed of your right to have a relation or friend present *at this hearing.* Do you desire to avail yourself of this right?" To which this boy, fifteen years old, without counsel, replied: "No." "Q. Do you waive your right to have present a relative or friend and are you now willing to proceed with the hearing?" To which this boy, fifteen years old, without counsel or advice, confined three months already without having been permitted to see a relation or friend, replied: "Yes." The applicant was then very briefly examined before a board of special inquiry and the case deferred to Sept. 25, when the Medical Officer in Charge reported, after "thorough physical examination," "Although he appears older than the age claimed, the X-ray plates showed skeleton formation characteristic of a person in the vicinity of fifteen years of age, which is approximately the age claimed." Without further examination, a Board of Special Inquiry not the same as before, on Sept. 12, entered a not satisfied decision; and on October 1, 1924, more than three months after his arrival, *another* Board, only one member of which had seen any of the witnesses, announced to this boy: "You have been refused admission to the United States by this Board as a Chinese alien." See Memorandum *re* Record of Proceedings Before the U. S. Immigration Board; Record, page 5.

The questions presented in this case are the following, to wit:

I. Was the petitioner deprived of his liberty without fair trial in accordance with due process of law?
(See fourth request for ruling, R. p. 7, and third assignment of error, R. page 8.)

II. Was the Court pursuant to the writ of habeas corpus bound to hear and consider evidence duly

offered as to the citizenship of the petitioner and *the lack of jurisdiction* of the Department of Labor to order his deportation?
(See second request for ruling, R. p. 6, and fourth assignment of error, R. p. 8.)

III. Was it not error for the court to refuse the first request for ruling (see R. page 6) that the Act of Congress of February 5, 1917, under which the Department of Labor adjudged the petitioner to be an alien, has no application to a son of a citizen of the United States?
(See second assignment of error R. p. 7.)

IV. Is not the first section of the Act of Congress of Feb. 5, 1917, regulating immigration of aliens and residence of aliens in the United States unconstitutional in that it designates as aliens any person or persons not native born or naturalized citizens of the United States thereby unlawfully discriminating against such as are declared to be citizens by section 1993 of the Revised Statutes of the United States? (See first assignment of error, R. p. 7).

V. In view of the error of the immigration officers and the Secretary of Labor in interpreting the law was it not the duty of the Court to hear the evidence duly offered and decide the question of citizenship?
(See bill of exceptions, R. pps. 5, 6 and 7.)

BRIEF OF THE ARGUMENT.

I.

1. The petitioner did not have a fair trial and was not accorded fair treatment by the immigration officers under the law, and the rules promulgated by the Department of Labor. The petitioner was detained three months without any examination whatever: then was subject to the merest semblance of the trial provided by

law for *aliens*. It is perfectly clear that the examination of aliens must be by a board of special inquiry: [See Section 16, of the Act of Congress of Feb. 5, 1917 and section 17 of the same act] that such board of special inquiry shall see and examine the witnesses: and that such board of special inquiry, having seen and examined the witnesses, is the sole authority to decide as to landing or deporting of alien applicants; whereas the petitioner's case was practically tried and determined by a single inspector, without any board whatever until the very end of his long delayed trial. Said section 17 says the decision "shall be rendered" on appeal, "*solely upon the evidence adduced before the board of special inquiry.*" It is clear that this law requires that the witnesses shall appear before such board; and that it shall be *one* board; and that the case shall be decided by one and the same board which has seen the witnesses and heard their testimony.

Moreover this law provides: (same section 17)

"All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present." It is to be noted that after all the evidence had been taken, at the very conclusion of the trial, this boy is told of this, and asked if he waived the right. This is manifestly a sham, a mere pretense of conforming to the law, and we may well doubt if the applicant had the least comprehension of his right, or of the waiver, or what it all meant.

It appears in the bill of exceptions, Record, page 6, that,

"The court found that the petitioner was not allowed to see counsel or friends until after all the testimony had been taken by the Board of Special Inquiry; that his counsel was not permitted to be present at or to participate in the examination of the petitioner or his witnesses; nor to know what the petitioner had testified, nor what the evidence was, until the record had been closed and a

conclusion had been reached adverse to the petitioner; and that at that point, for the first time, the petitioner and his counsel were allowed to see the record and to know what the evidence was on which said conclusion had been reached and the adverse decision thereon rendered."

We submit that such a trial as that described is not according to law, is obviously unfair to this applicant, and is not due process of law under the constitution.

What is due process of law? "The constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government and cannot be so construed as to leave Congress free to make any process "due process of law" by its mere will." Justice Curtis delivering the opinion of the Court in Murray's *Lessee et al v. Hoboken Land and Improvement Company,* 18 Howard 272.

"Proceedings in a court of justice to determine the personal rights and obligations of parties over whom that Court has no jurisdiction do not constitute due process of law." (Justice Field delivering the opinion of the court in *Pennoger* v. *Neff*, 95 U. S. 733, quoted by Chief Justice White delivering the opinion of the court in *Riverside Mills* v. *Menefee,* 237 U. S. 189-193).

II.

It was the duty of the Court to hear and consider evidence duly offered as to citizenship of the petitioner. The evidence was competent and material as to the jurisdiction of the immigration authorities to annul the citizenship and deport the applicant. The board of inquiry is not a court but an instrument of executive power and as the executive power cannot take away citizenship, neither can its instruments annul citizenship. A party

is entitled to habeas corpus, not merely where the court is without jurisdiction of the cause, but where it has no constitutional authority or power to condemn the prisoner.

Ex parte Neilsen, 131 U. S. 176.

Want of jurisdiction may be shown either as to the subject matter, or the person.

Thompson v. *Whitman*, 18 Wall 457.

The court on habeas corpus should have determined the merits of the claim of father and son as to the latter's citizenship.

Chin Yom v. *United States*, 208 U. S. 8.

See also

Ng Fung Ho v. *White*, 259 U. S. 276.

White v. *Chin Fong*, 253 U. S. 90, 93.

United States v. *Woo Jan*, 245 U. S. 552, 556.

Kwock Jan Fat v. *White*, 253 U. S. 454, 464.

Chin Hoy v. *United States*, 293 F. R. 750.

Ex parte Low Joe, 287 F. R. 545.

United States v. *Todd*, 285 F. R. 523, 526.

III.

All of the language of the immigration acts plainly relates to *aliens*. It is not to be inferred that in the absence of any specific provision as to determination of citizenship the congress intended authority to be given to subordinate officers to annul citizenship and banish to perpetual exile those recognized as citizens by our laws. Here is a father who is indisputably a citizen, duly acknowledged as a citizen with children who are citizens, authorized to bring into the country his minor

son to whose company and service he has an undoubted right by law, and the father was a party to the petition in the District Court.

See

United States v. *Bainbridge*, 1 Mason 71-78,

and cases cited in opinion by Judge Story.

"Protection and allegiance are reciprocal. The sovereign cannot refuse his protection to any subject, nor discharge him from his allegiance without his consent." Parsons C. J. delivering the opinion of the court in

Ainslee v. *Martin*, 9 Mass. 454-460.

IV.

We deny the power of Congress under the Constitution to define the word "alien" wherever used in the Immigration Act of February 5, 1917, to include "*any person not a native born or naturalized citizen of the United States.*"

We submit that there is in this definition an unjust discrimination against the persons declared to be citizens by section 1993 of the Revised Statutes of the United States.

It is too plain to admit of argument that a citizen of the United States coming within its jurisdiction is entitled to the equal protection of the laws.

Thus to brand a citizen of the United States as an "*alien,*" in advance of any hearing before the department or its officers, or any tribunal, judicial or otherwise, is to make an unjust discrimination and emphasize an unjust prejudice, and goes far to make a fair hearing impossible, and to prevent that equal protection of the laws to which all citizens are entitled under the Constitution. Congress can make citizens by the laws for naturalization, and by declaring the existing law, as in section 1993 of the Revised Statutes of the United States; but

Congress has no power, either directly by enactment, or through immigration laws authorizing departmental regulations as to immigrants, to deprive this Chinese-American boy of his citizenship and the fair trial to which he is entitled.

V.

The trial of the applicant was unfair. He was condemned to exile without hearing. The claim of his father to his company and service was ignored. Whatever may be said about the applicant as mere immigrant, the father had a right as a citizen of the United States to a determination of his rights in Court.

There has always existed in the courts the power to inquire into and correct mistakes, injustice and wrong, in both Judicial and Executive action, however solemn the form which the result of the action may assume, when it invades private rights. See opinion of the Court by Justice Miller in *Johnson* v. *Townsley*, 13 Wall. 72, 84.

And finally we submit the following propositions which seem to us self evident; and, moreover, conclusive to the effect that the judgment of the District Court should be reversed, the case remanded, the writ to issue and trial to be had in that court of the question of citizenship.

First: To decide that the immigration officers have absolute and final determination of the facts on which their jurisdiction to imprison and deport depends so that such facts cannot be inquired into on habeas corpus is in effect to suspend the writ of habeas corpus in time of peace.

Second: To decide that Congress can by legislation authorize administrative officers to deport citizens without any right of appeal to the courts is virtually to hold that Congress may pass a bill of attainder in defiance of the constitution.

Third: To decide that citizenship by birth can be annulled by administrative officers under a law passed many years after birth is to hold that a retrospective law can deprive a citizen of the vested, inalienable rights accruing to him by virtue of such citizenship, in disregard of the prohibition of the constitution of the United States.

Respectfully submitted,

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of Counsel for Appellant.